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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,544	08/13/2001	Abraham Sacks	S660 0009	6080

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/927,544

Applicant(s)

SACKS ET AL.

Examiner

Chapman E Jeanette

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 37-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 and 36 is/are rejected.
- 7) ☒ Claim(s) 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 37-43 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group II, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims ~~1~~ and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Clancey (617458).

Clancey discloses a wire lath comprising:

- a plurality of parallel transverse wires lying in a first plane and departing there from in a plurality of spaced bent section. Each bent section defines first/second shoulder regions; see annotations on patent copy;
- a plurality of parallel first longitudinal wires lying in the first plane and intersecting with and attached to the transverse wires
- for each of the plurality of bent sections a longitudinal wire is attached to the shoulder regions;

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- a plurality of parallel second wires lying in a second plane parallel to and spaced apart from the first plane; the second longitudinal wires are attached to the bent sections of the transverse wires.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-7, 17, 23-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clancey in view of Jaenson (5540023).

Clancey lacks a barrier and backing layers 14 and 18. The barrier layer is of paper as shown by Jaenson with his wire lath. All paper includes some degree of absorbency. It would have been obvious to include the same in the structure of Clancey in order to protect the lath.

For Clancey; the angle between the portions of the transverse wires extending between the longitudinal wires on the bent section, the wire on the shoulder portion and normal to the first plane is shown to be approximately 30 degrees; one of ordinary skill in the art would have appreciated the amount of bend thus the angle to make the bend in order for the lath to function as intended or purposed.

Perforation is common in any product where ventilation is required. This structural characteristic is not applied to any one type of product ; it is used in cars, walls, houses, clothing, roads, etc..... If ventilation were required in the lath/barrier

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structure, it would have been very clear to use holes in the structure directly providing the ventilation function. The size and shape of the apertures have been considered a matter of routine procedural design; one of ordinary skill in the art would have appreciated the amount of ventilation required and would have sized and shape the opening accordingly.

Wires are known to be made with various cross sections; one of ordinary skill in the art would have appreciated the selection and would have selected those which best suited the intended purpose and function of the lath.

Claims 9-10, 12, 18-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clancey in view of Douthwaite (4003178).

Clancey's bent sections are not v-shaped; though Clancey illustrates a variety of differently shaped bent sections. The particular shape of bent section is not deemed critical to the overall structure and function of the device. One of ordinary skill in the art would have appreciated the various shapes available and would have selected any one which aided in fulfilling the overall structure and function of the device.

Nevertheless, Douthwaite discloses a lath with v-shaped bent section. As shown by Douthwaite, it would have been obvious to include this optional shape requiring less longitudinal wires. Douthwaite discloses longitudinal wires attached to the bent sections at points of the v-shaped bent sections.

The second embodiment of Clancey is substantially and generally u-shaped.

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Claims 11,13-16,20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clancey in view of Jaenson /Douthwaite as applied to the depending claims and further in view of Ritter et al (4539787).

The height of the bent section and the spacing distance of the longitudinal wires has been considered a matter of choice; one of ordinary skill in the art would have appreciated the variation and would have selected those measurements best suited for the intended purpose and function of his structure. Nevertheless, Ritter et al discloses variation in spacing according to the intended function/purpose of a section of the lath. See figures 14-16. It would have been obvious to employ measurements that correspond to the intended function and purpose of the lath and its sections.

For claims 14-16 see above paragraphs

***Allowable Subject Matter***

Claim 35 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 703-308-1310. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

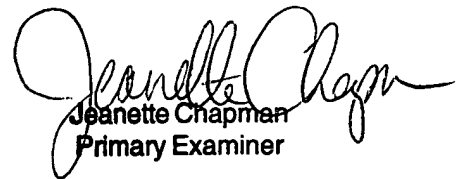
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman, Carl can be reached on 703-308-0839. The fax phone numbers

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for the organization where this application or proceeding is assigned are 305-7687 for regular communications and 305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

jec  
February 5, 2003

  
Jeanette Chapman  
Primary Examiner